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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service

Rulemaking 95-04-043

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service

Investigation 95-04-044

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING JOINT MOTION OF
AT&T CALIFORNIA AND COX COMMUNICATIONS FOR THE COMMISSION
TO ESTABLISH INDUSTRY-WIDE LOCAL RULES UNDER SECTION 2883 OF
THE CALIFORNIA PUBLIC UTILITIES CODE**

Summary

This ruling denies the motion filed on June 3, 2006 by Pacific Bell Telephone company doing business as AT&T California (AT&T California) and Cox California Telcom, LLC d/b/a Cox Communications (Cox) for the Commission to establish local competition rules in the above-captioned docket (Local Competition docket) regarding carriers' warm-line obligations under Section 2883 of the California Public Utilities Code (Section 2883, or Statute).

Section 2883 requires all local telephone corporations in California to provide, subject to certain exclusions, telephone access to 911 emergency service to residential telephone connections, even where no customer has established a working telephone account. Access to 911 that is provided without basic telephone service is commonly known as "warm" or "soft" dial tone or "warm-line service."

Currently pending before the Commission are two complaints (Case (C.) 05-11-011 and C.05-11-012) brought by the Utility Consumer's Action Network (UCAN) – one against AT&T California and the other against Cox – alleging that AT&T California and Cox have violated Section 2883.¹ The Joint Movants argue that the Commission should grant this Motion and establish a comprehensive set of rules in the Local Competition docket delineating the specific obligations of local telephone companies under Section 2883 to provide warm dial tone. Otherwise, they argue, rules will be fashioned in an ad hoc manner on a carrier-by-carrier basis in individual complaint proceedings, such as the two complaint cases currently pending before the Commission (C.05-11-011 and C.05-11-012).

UCAN filed a response in opposition to the Joint Motion on June 19, 2006. UCAN opposes the Joint Motion on several grounds. UCAN characterizes the motion as a “back-door” attempt to try and obtain dismissal of the above-referenced adjudicatory proceedings and thereby potentially avoid liability for past unlawful conduct. UCAN claims that the motion is procedurally improper, as it could have been made some time ago and was not, thus contravening a ruling by ALJ Thorson in the above-referenced complaint cases directing that proceeding to go forward.

UCAN also argues that a rulemaking proceeding is unnecessary since the pending adjudicatory proceeding can provide proper direction to AT&T and other companies to the extent relevant. UCAN contends that the subject matter

¹ Concurrent with the filing of the Motion, AT&T California and Cox jointly filed a Motion to Stay in C.05-11-011 and C.05-11-012. Both Motions were served in all three dockets (R.95-04-043/I.95-04-044, C.05-11-011, and C.05-11-012).

involved in the motion is unsuited for a rulemaking proceeding since different companies use different technologies and systems based on their unique situations. UCAN thus opposes the motion and asks that it be denied.

Verizon California, Inc. (Verizon) also filed a response to the Joint Motion. Verizon expresses agreement that carriers' obligations under Section 2883 should be addressed in a generic rulemaking, but with two conditions: (1) that all carriers be provided with notice and opportunity to be heard on all aspects of the rulemaking, and (2) that the record in the complaints should be made available to all affected carriers in order to incorporate pertinent portions into the generic rulemaking.

The Joint Movants were granted leave to file a third-round reply on June 27, 2006. In their third-round reply, Joint Movants dispute UCAN's claim that the Joint Motion is procedurally improper because the Joint Movants did not challenge the categorization of the complaints filed by UCAN (i.e., C.05-11-011 and C.05-11-012). Joint Movants argue that whether they waived or challenged such categorization is irrelevant in considering the merits of the Joint Motion, and that the relief that could be obtained by challenging the adjudicatory categorization is distinct from the request in the Joint Motion.

The Joint Movants also dispute UCAN's claims that the Commission has substantively addressed Section 2883 in prior decisions. The Joint Movants contend that none of the decisions cited by UCAN address the issues raised in the Joint Motion, requesting that this proceeding be used to establish rules governing carriers' obligations to provide access to 911 under Section 2883.

Discussion

The Joint Motion is hereby denied for the Commission to institute a new phase of the existing Local Competition Docket to consider generic industry

rules for warm-line service pursuant to Section 2883. The Joint Motion is denied without prejudice based on procedural grounds. Assuming that the Commission were to institute a generic rulemaking proceeding regarding carriers' warm-line obligations under Section 2883, the existing Local Competition docket would not be the proper vehicle for such a purpose. Pursuant to Section 1708.5, interested persons may petition the Commission to adopt, amend, or repeal a regulation. Accordingly, the proper procedure for parties seeking for the Commission to engage in rulemaking relating to carriers' warm-line obligations under Section 2883 would be to file a petition for the opening of a new docket pursuant to Section 1708.5.

As a related matter, UCAN argued that AT&T could try to avoid the ex parte prohibition applicable to the adjudicatory proceedings by claiming it is having such discussions under the guise of a rulemaking proceeding. (See UCAN Response at 7.) The Assigned Commissioner and ALJ in the referenced complaints (C.05-11-011 and C.05-11-012) have issued a joint ruling indicating that they will engage in further inquiry concerning the facts surrounding an ex parte communication by representatives of AT&T and Cox that may have already occurred relating to the Joint Motion and the complaint proceedings to determine whether, or if so, what further action may be warranted.

IT IS RULED that the Joint Motion to establish industry-wide rules regarding carriers' warm-line obligations under Public Utilities Code Section 2883 as a phase of the Local Competition Rulemaking is hereby denied without prejudice.

Dated June 29, 2006, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated June 29, 2006, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.